

Joint Commercial Tax Officer, Division III, Madras

Vs

M/S. Spencer & Co. and Others

Civil Appeals Nos. 2005 to 2016 of 1970

(V. R. Krishna Iyer, R. S. Sarkaria, A. C. Gupta JJ)

02.05.1975

JUDGMENT

GUPTA, J. –

1. These twelve appeals arise out of a common judgment of the Madras High Court disposing of the writ petitions filed by the respondents in which they challenged certain orders of the assessing authority under the Madras General Sales Tax Act, 1959 proposing to determine the taxable turnover of the respondents by including the sale-price of foreign liquor which it was alleged, had escaped assessment. The High Court directed the sales tax authorities not to include in the assessable turnover the tax paid by the respondents under Section 21-A of the Madras Prohibition Act, 1937. In these appeals, brought on certificate of fitness, the correctness of the High Court's decision is questioned by the sales tax authorities. The appeals have three different assessees as respondents and relate to different assessment years concerning each assessee, ranging from 1959-60 to 1964-65.

2. The assessees are dealers in foreign liquor, among other goods. They have been assessed to sales tax as dealers on sales or purchases of other goods under Section 3(1) of the Madras General Sales Tax Act, 1959. Section 3(1) is the charging section providing generally that a dealer whose total turnover for a year is not less than the specifies amount, shall pay a tax for each year at the specified rate. 'Turnover' is defined in Section 2(r) of the Act. The relevant part of the definition is as follows :

'Turnover' means the aggregate amount for which goods are bought or sold, or supplied or distributed, by a dealer, either directly or through another, on his own account or on account of others whether for cash or for deferred payment of other valuable consideration,

'Total turnover' is defined in Section 2(q) of the Act as the aggregate turnover in all good of a dealer at all places of business in the State, whether or nor the whole or any portion of such turnover is liable to the tax.

The question is whether the 'sales tax' collected by these assessees under Section 21-A of the Madras Prohibition Act, 1937 can be treated as part of their total turnover. Section 21-A, so far as it is relevant for the present purpose, is in these terms :

Every person or institution which sells foreign liquor -

##(a) * * *(b) * * *##

shall collect from the purchaser and pay over to the Government at such intervals and

in such manner as may be prescribed, a sales tax calculated at the rate of eight annas in the rupee, or at such other rate as may be notified by the Government from time to time, on the price of the liquor so sold.

Counsel for the appellants contended relying on several decisions of the Court to which we shall presently refer, that the amounts collected by the assesseees by way of sales tax from the purchasers were part of their total turnover and as such liable to be taxed under Section 3(1) of the Madras General Sales Tax Act, 1959. In *M/S. George Oakes (P) Ltd. v. State of Madras* ((1962) 2 SCR 570 : AIR 1962 SC 1037 : (1961) 12 STC 476), this Court considered the question whether inclusion of the amounts collected by the appellants in that case as sales tax under the Madras General Sales Tax Act, 1939 was valid. The expression 'turnover' in the 1939 Act meant, as it does in the 1959 Act, aggregate amount for which goods are bought or sold, whether for cash or for deferred payment or other valuable consideration. This Court observed :

... when a sale attracts purchase tax and the tax is passed on the consumer what the buyer has to pay for the goods includes the tax as well and the aggregate amount so paid would fall within the definition of turnover ... so far as the purchaser is concerned, he pays for the goods what the seller demands, viz., price even though it may include tax. That is the whole consideration for the sale and there is not reason why the whole amount paid to the seller by the purchaser should not be treated as the consideration for the sale and included in the turnover.

A similar view was taken by this Court in *State of Kerala v. Ramaswami Iyer & Sons* ((1966) 3 SCR 582 : AIR 1966 SC 1738 : (1966) 18 STC 1). This was a case under the Travancore Cochin General Sales Tax Act, 1950. Here also the decision turned on the definition of 'turnover' which is similar to the definition of the term in the Madras General Sales Tax Act, 1959. The position was further explained in *Delhi Cloth and General Mills Co. Ltd. v. Commissioner of Sales Tax, Indore* (1971 Suppl SCR 945 : (1971) 2 SCC 559), which was a case under the Madhya Pradesh General Sales Tax Act, 1958. The relevant provisions of this Act appear to be similar to those of the Madras General Sales Tax Act, 1959. Stating that the liability to pay tax under the Act is that of the dealer. Hegde, J. speaking for the Court said that the Act did not confer [SCC p. 562, para 7]

any statutory power on the dealer to collect sales tax as such from any class of buyers Unless the price of an article is controlled, it is always open to the buyer and the seller to agree upon the price to be payable. While doing so it is open to the dealer to include in the price the tax payable by him to the Government. If he does so, he cannot be said to be collecting the tax payable by him from his buyers. The levy and collection of tax is regulated by law and not by contract. So long as there is no law empowering the dealer to collect tax from his buyer or seller, there is no legal basis for saying that he dealer is entitled to collect the tax payable by him from his buyer or seller. Whatever collection that may be made by the dealer from his customers same can only be considered as valuable consideration for the goods sold.

3. It is clear from Section 21-A of the Madras Prohibition Act, 1937 that the sales tax which the section requires the seller of foreign liquor to collect from the purchaser is a tax on the purchaser and not on the seller. This is what makes the authorities on which Counsel for the appellants relied inapplicable to the cases before us. Under Section 21-A the payable is on the price of the liquor and that tax is to be paid by the purchaser, the seller is required to collect the tax from the purchaser which he has to pay over to the Government. Section 21-A makes the seller a collector of tax for the Government and the amount collected by him as tax under this section cannot therefore be a part of

his turnover. Under the Madras General Sales Tax Act, 1959 the dealer has no statutory duty to collect the sales tax payable by him from his customer, and when the dealer passed on to the customer the amount of tax which the former is liable to pay, the said amount does not cease to be the price for the a goods although "the price is expressed as X plus purchase tax" (Paprica Ltd. v. Board of Trade, (1944) 1 All ER 372). But the amounts collected by the assesseees concerned in these appeals under a statutory obligation cannot be a part of their taxable turnover under the Madras General Sales Tax Act, 1959.

4. The appeals are dismissed with costs : one hearing fee.

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